assessed the damages as $604,890 and gave judgment for that amount.

The Attorney-General then appealed to the Court of Appeal which allowed the appeal and the appellant now appeals to their Lordships' Board.

Their Lordships agree entirely with the judgment of the learned trial judge. They have with respect come to the conclusion that the Court of Appeal has not given sufficient weight to paragraph 3 of the D.C.A.'s letter of January 11, 1972 addressed to the appellant.

The option promised in that paragraph (recited earlier in this judgment) is an option for an extension of the tenancy from February 1, 1975 for a period of 3 years and not three months as it would have been if clause 4(i) could be applied to cut down the option promised in the D.C.A.'s letter of January 11 and confirmed by his letter of June 27.

Their Lordships therefore allow the appeal, set aside the order of the Court of Appeal and restore the judgment of Choor Singh J. The respondent must pay the costs of the appeal to the Court of Appeal and of this appeal.

Appeal allowed.

Solicitors: *Baker & McKenzie; Jaques & Co.*

SINGAPORE REPORTS

PUBLIC PROSECUTOR v. G. CHOUDHURY

[C.C.A. (Wee Chong Jin C.J., Kulasekaram & Sinnathuray JJ.) October 30, 1980]

[Singapore — Magistrate's Appeal Nos. 112 & 112A of 1978 — Reservation of Questions of Law of Public Interest for the decision of the Court of Criminal Appeal]

Company Law — Insider trading — Questions reserved for court — Scope of s. 132A(1) — "facing a financial crisis" — "Specific confidential information" — Meaning of — Companies Act (Cap. 185), s. 132A — Securities Industry Act, 1970, s. 75A.

The respondent, chairman and chief executive of Ben & Co. Ltd., a public trading company claimed trial on six charges under section 132A(8) of the Companies Act (Cap. 185). He was convicted and sentenced to nine months' imprisonment on each charge, the sentences to run concurrently.

On appeal to the High Court (see [1980] 2 M.L.J. 231), Rajah J. held the six charges as framed were invalid. He allowed the appeal and quashed the convictions. On application by the prosecution, two questions were reserved for the decision of the Court of Criminal Appeal: a) whether in alleging that the accused had been dealing in the securities of Ben & Co. Ltd. by himself by disposing of 360,000 shares in a number of transactions on January 13, 1976, January 23, 1976, January 29, 1976, January 30, 1976 and February 3, 1976 and making use of confidential information that the company was facing a financial crisis, he could be described as having acted upon "specific confidential information" thereby committing a breach of provisions of section 132A(1) of the Companies Act (Cap. 185); and b) whether in law the charges Nos. 1 to 6 (DAC Nos. 286, 512-516 of 1978) disclosed offences under section 132A of the Companies Act and punishable under section 132A(8) of the said Act.

Held, answering both questions in the affirmative: (1) it was a question of fact in each case to be resolved on the evidence adduced at the hearing of the case as to what is "specific confidential information;

(2) "information", as used in the section, meant knowledge of a particular event or situation such as advice, communication, intelligence, news, notification and the like;

(3) the knowledge which the respondent had of the then financial situation of the company was specific information within the meaning of section 132A of the Companies Act. It was the kind of specific information anyone familiar with the market knows that could markedly affect the prices of the particular shares and could result in the suspension of the trading of the shares on the Stock Exchange;

(4) in the view that it was one of the kinds of confidential information that an insider might not use for his own benefit and to the detriment of the investing public, the Legislature had enacted section 132A;

(5) the learned District Judge was therefore right when he held that knowledge of a financial crisis in a company was specific information as it was capable of being pointed to, identified and unequivocally expressed;

(6) a defective or imperfect charge was one that did not have sufficient particulars to give notice to the accused of the *manner* in which he was alleged to have committed the offence: section 159 of Criminal Procedure Code;

(7) in this case, the phrase "facing a financial crisis" had no reference to the *manner* in which the respondent was alleged to have committed the offences as knowledge was not *actus reus* of the offence; the allegation was not essential to constitute the offence and the phrase could have been omitted by the prosecution without affecting the charge.

Cases referred to:-

(1) *Ryan* v. *Triguboff* (1974-76) 1 A.C.L.R. 337; [1976] 1 N.S.W.L.R. 588.

(2) *Chaloner* v. *Bolckow* (1877-8) L.R. 3 App. Cas. 933, 938.

(3) *Green* v. *Charterhouse* (1976) 68 D.L.R. (3d.) 592.
(4) *R.* v. *McVitie* (1960) 44 Cr. App. R. 201, 209.

COURT OF CRIMINAL APPEAL.

A.W. Ghows, Solicitor-General, (*Sowaran Singh* (Deputy Public Prosecutor) with him) for the applicant.

J. Grimberg as *amicus curiae*.

Cur. Adv. Vult.

Sinnathuray J. (delivering the judgment of the Court): Choudhury was the chairman and chief executive of Ben & Co. Ltd., a public trading company. On June 19, 1978, he claimed trial in the Subordinate Courts on six charges under section 132A(8) of the Companies Act (Cap. 185) (the Act). After a lengthy trial, on August 2, 1978, he was convicted and sentenced to nine months' imprisonment on each charge, the sentences to run concurrently.

On appeal to the High Court, on November 19, 1979, after a five-day hearing, A.P. Rajah J. held the six charges as framed were invalid. He allowed the appeal and quashed the convictions. Ten days later, on November 29, 1979, on an application by the Public Prosecutor, under section 60 of the Supreme Court of Judicature Act (Cap. 15), the learned judge reserved two questions of law of public interest for the decision of this court. They are:

(a) Whether in alleging that the accused had been dealing in the securities of Ben & Co. Ltd. by himself by disposing of 360,000 shares in a number of transactions on 13.1.76, 23.1.76, 29.1.76, 30.1.76 and 3.2.76 and making use of confidential information that the company was facing a financial crisis, he can be described as having acted upon "specific confidential information" thereby committing a breach of the provisions of section 132A(1) of the Companies Act (Chapter 185).

(b) Whether in law the charges Nos. 1 to 6 (DAC Nos. 286, 512-516 of 1978) disclose offences under section 132A of the Companies Act (Chapter 185) and punishable under section 132A(8) of the said Act.

Except for the dates of the offences and the number of shares referred to in the charges, the six charges are identical and it is sufficient for our purpose to refer to one only:

"That you, on or about the 13th day of January, 1976, in Singapore, being the Chairman of the Board of Directors of Ben & Co. Ltd. in relation to dealings in the shares of the said company by yourself, to wit, the sale of 125,000 shares [Contract Nos. A 56250Y (SK) and A 56249Y (SK)], made use to gain an advantage for yourself, of specific confidential information that Ben & Co. Ltd. was facing a financial crisis, which information you acquired by virtue of your position as an officer of Ben & Co. Ltd. and which information if generally known might reasonably be expected to affect materially the prices of the shares you were selling on the Stock Exchange, and you have thereby committed an offence punishable under section 132A(8) of the Companies Act (Chapter 185)."

Again, as regards breach of the provisions of section 132A of the Act, we can confine ourselves to subsection (1), the relevant portion of which reads as follows:

"(1) An officer, agent or employee of a corporation who in or in relation to a dealing in securities of the corporation by himself or any other person makes use to gain, directly or indirectly, an advantage for himself or any other person of specific confidential information acquired by virtue of his position as such officer, agent or employee which if generally known might reasonably be expected to affect materially the price of the subject-matter of the dealing on a stock exchange shall... [be liable to the] penalty imposed under subsection (8)....

As the questions before us concern the charges, it is relevant to relate how the charges as framed were before the trial court. When Choudhury was first charged in court, there was only one charge under section 132A of the Act. It stated:

"That you, between the 13th day of January, 1976 to 3rd day of February, 1976, in Singapore, being the Chairman of the Board of Directors of Ben & Co. Ltd. in relation to dealings in the shares of the said company, [for details of the dealings, see attached list], did make use to gain an advantage for yourself, of specific confidential information that Ben & Co. Ltd. had sustained heavy losses for the year ending 29th February, 1976, which information you acquired by virtue of your position as an officer of Ben & Co. Ltd. and which information if generally known might reasonably be expected to affect materially the prices of the shares you were selling on the Stock Exchange, and you have thereby committed an offence punishable under section 132A(8) of the Companies Act (Chapter 185)."

The details in the attached list set out six dates, the number of share dealings on each date, and the net proceeds of each of them.

At that stage of the proceedings, Mr. Marshall for Choudhury objected to the charge for lack of particulars on two matters — "dealings in the shares", and as to what "did make use" refer to. Later, the prosecution amended the charge, but the particulars sought were not furnished. Instead, the one charge was split into six charges, one for each of the six dates given in the attached list. There was also an amendment in the text of the six charges, the phrase "facing a financial crisis" was substituted for the phrase "sustained heavy losses for the year ending February 29, 1976" in the original charge.

Then came the trial. Mr. Marshall again took a preliminary objection to the charges. This time the submission was that the charge did not disclose offences under section 132A(1) of the Act. It was argued that the phrase "facing a financial crisis" is not "specific information". The District Judge overruled the objection. In his grounds of decision, he said that knowledge of a financial crisis in a company is specific information as it is capable of being pointed to, identified and unequivocally expressed: see *Ryan* v. *Triguboff*.[1]

When the case went on appeal to the High Court, Mr. John Newey Q.C. who now appeared for Choudhury also challenged the validity of the charges on the same ground. For information to be specific, it was said, it had to be distinct, explicit, precise, exact, definite and unequivocal as opposed to information of general nature: see *Chaloner* v. *Bolckow*[2] and *Ryan* v. *Triguboff, supra*. The phrase "facing a financial crisis" was said to connote something much too general in nature, information of a nebulous kind, depending for its meaning on the opinion and judgment of an individual and not sufficiently distinct, etc. to bring it within the meaning of "specific information".

The learned judge accepted the submission of counsel for Choudhury. He said:

"Popular speech does not, nor has it given the phrase 'facing a financial crisis' any sure guide as to the limits of what is meant by it or of the conditions or circumstances in which a financial crisis occurs....

In my view whether a company is facing a financial crisis is a matter of opinion which one deduces after having looked at matters relating to the finances of a company, its management and the support it receives from its bankers. What might strike one as constituting a financial crisis need not strike another in the same way. In other words this is a matter of opinion or of judgment. The phrase 'facing a financial crisis' is a subjective statement and not an objective one, precisely or unequivocally expressed."

So then, our inquiry is only into the charges, whether the facts as alleged therein amount to an offence punishable in law.

(a) *Specific confidential information*

The phrase, "specific confidential information" which is an essential ingredient of the offence, is spelt out in each of the charges. The prosecution, however, gave particulars of it. Initially it was "sustained heavy losses". Then it came to be "facing a financial crisis". We shall consider in the second question the giving of particulars for charges, but to understand the phrase "facing a financial crisis", we consider first the ingredient "specific confidential information".

There are many reported decisions on the word "specific" used as an adjective in statutes. The case of *Chaloner* v. *Bolckow, supra,* referred to by Mr. Newey is one of them. In this case, the sole question was whether a general covenant in a mining lease "to pay all manner of taxes which now are or which shall at any time hereafter be imposed" was affected by a section in a new Rating Act which provided "unless he has specifically contracted to pay such rate". It was in the construction of the clause that Lord Hatherley said, looking at the Act of Parliament:

"I conceive it to be quite impossible reading through that clause to apply the word 'specifically' to any part of it. 'Specific' is ordinarily used in the common parlance of language as meaning distinct from general; and when you find a general covenant to pay all rates I should think it is almost the opposite to a specific covenant to pay a particular rate."

No one can seriously dispute that "specifically contracted" excluded what was generally covenanted in the lease. Our difficulty is not the word "specific" for it is synonymous with distinct, precise, etc. stated above, but to give meaning to the word "information" as used in section 132A of the Act for which *Chaloner* v. *Bolckow* is of no assistance.

The phrase "specific information" was judicially considered in the Australian case: *Ryan* v. *Triguboff, supra.* In this case Lee J.'s *dictum*

"The 'specific information' to which the section refers must have an existence of its own... must be capable of being pointed to and identified, and must be capable of being expressed unequivocally."

was, as he put it, "some general observations on the section" on the "findings of facts" before him. He sought to give the limits of the phrase. He was cautious, however not to declare the meaning of it.

In the one other reported case from Canada, *Green* v. *Charterhouse,*[3] the Ontario Court of Appeal was even more reticent. The plaintiff, under a shareholders' agreement, had to offer his shares to certain other shareholders before selling them to outsiders. He made such an offer because he thought the market price was likely to decline. The other shareholders reluctantly accepted to prevent the sudden release of the plaintiff's shares on the market. Shortly before the sale, the other shareholders informed the plaintiff of the possibility (not yet even probable) of a take-over of the company under which an offer might be made for the shares at a substantially higher price than the market price. Later the take-over materialised and the shares rose in price. In an action by the plaintiff under section 113 of the Securities Act, 1966 for the imposition of liability on an insider who makes use of specific confidential information for his own benefit, the High Court held that the purchasers of the shares were not liable as information that was preliminary and uncertain was not specific confidential information.

The Ontario Court of Appeal however held the information possessed by the purchasers was specific confidential information within the meaning of the section, the relevant portion of which reads as follows:

"113(1) Every insider of a corporation... who, in connection with a transaction relating to the capital securities of the corporation, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person... for any direct loss suffered by such person or company as a result of such transaction...."

The Judgment of the Court delivered by Arnup J.A. dealt with the matter thus:

"Leaving aside for the time being the phrase 'make use of', did the defendants possess 'specific confidential information ... that, if generally known, might reasonably be expected to affect materially the value of' Imbrex shares?... Taking the case of Godbout [one of the defendants], who obviously had more information than anyone else, it is my view that the information he had on April 30, 1968, as to the first quarter earnings, and as to the state of the negotiations with Neon was in each case 'specific'.

The facts Godbout had concerning Neon might have been unbelievable to other directors, or the proposals which were being made to him might have been totally unacceptable to them or some of them. The information may not have been worthy of credence or of sufficient weight to justify any positive action by the board of Imbrex. Nevertheless, in my view the information was 'specific'; the word is used by the section in contradistinction to 'general', or 'not specific'."

This much is clear from the Canadian case. It is a question of fact in each case to be resolved on the evidence adduced at the hearing of the case as to what is "specific confidential information". We endorse the test for the same phrase in our section. We also accept that "specific" is used in contradistinction to "general". But what of the word "information"? Again, it is a question of fact, a matter of evidence. It is knowledge of a kind "if generally known might reasonably be expected to affect materially the value (in our section "price") of" the shares of a company. In our view, "information", as used in the section, means knowledge of a particular event or situation such as advice, communication, intelligence, news, notification and the like.

(b) *Facing a financial crisis*

Having had recourse to two standard dictionaries,

the *Shorter Oxford* and *Webster's*, the ordinary meaning of the phrase is: to confront an unpleasant or difficult situation pertaining to finance or money matters at a point of time when a decisive change for better or worse is imminent.

In the context of the facts in the charges, the phrase means that Choudhury had knowledge that Ben & Co. Ltd. was confronting a difficult situation relating to its finances at a point of time when the company's business was in a critical state and forced liquidation can occur. The allegations in the charges are that he had used this information which was generally not known to gain an advantage for himself by selling his shares in the company at favourable prices on the market. In our judgment the knowledge which Choudhury had of the then financial situation of the company is specific information within the meaning of section 132A of the Act. It is the kind of specific information anyone familiar with the market knows that can markedly affect the prices of the particular shares and can result in the suspension of the trading of the shares on the Stock Exchange. In the view we take it is one of the kinds of confidential information that an insider may not use for his own benefit and to the detriment of the investing public that the Legislature has enacted section 132A of the Act. The learned District Judge was therefore right when he held that knowledge of a financial crisis in a company is specific information as it is capable of being pointed to, identified and unequivocally expressed.

The second question whether in law the charges disclosed offences under section 132A of the Act is wider in scope than the first one. It must have been formulated *ex abundanti cautela* for other than the matters we have covered the validity of the charges was not challenged, either in the trial court or on appeal, in any other respect. At the hearing before us as the general subject of framing of charges was canvassed we feel we should deal with it. It arose in this way.

We raised a query: assuming that the charges do not have the particulars "facing a financial crisis" are the charges in any way defective or imperfect or are they bad in law. As regards the latter, a bad charge "would be one disclosing no offence known to the law, for example, where it was laid under a statute which had been repealed and not re-enacted": see *Rex* v. *McVitie*.[4] That cannot be said of the charges before us for they describe the offence "with complete accuracy". All the essential requirements of sections 157 and 158 of the Reprint of the Criminal Procedure Code (Cap. 113) have been complied with. The wording of the charges too follow the wording of section 132A(1) of the Act which creates the offence, save for the inclusion of the phrase "facing a financial crisis".

A defective or imperfect charge is one that does not have sufficient particulars to give notice to the accused of the *manner* (italicised for emphasis) in which he is alleged to have committed the offence: section 159 of the Code. It is this provision that gives rise to problems in the drafting of charges in summary trials where an accused does not know what the prosecution intends to prove at the trial.

When an objection is taken for lack of particulars the way to approach the problem is to ask oneself whether the particulars asked for relate to the *manner* in which the offence is alleged to have been committed. A good illustration are the facts in the present charges. The first objection taken by Mr. Marshall was for lack of particulars of "dealings in shares" and as to what "did make use" refer to. The particulars were not furnished though they related to the manner in which the offence is alleged to have been committed because in the original charge they were supplied in the attached list to that charge. They were later incorporated in each of the six charges. In this connection, we question the need to split the one charge into six charges. It seems to us that the list attached to that charge was "reasonably sufficient to give the accused notice of the matter with which he is charged", to comply with section 158(1) of the Criminal Procedure Code. The point we make is brought home when it is noted that the Legislature has provided that even as regards a charge for criminal breach of trust or dishonest misappropriation of money, under section 158(2) of the Code (subject to the proviso), "it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates and the charge so framed shall be deemed to be a charge of one offence". The reason we comment on the splitting of charges is because it causes concern to the judiciary in the Subordinate Courts as to the proper sentence to be given to an offender and whether it should be concurrent or consecutive.

Coming back to the phrase "facing a financial crisis", it is clear that the phrase has no reference to the *manner* in which Choudhury is alleged to have committed the offences as knowledge is not *actus reus* of the offence. Further, the allegation is not essential to constitute the offence. The phrase could have been omitted by the prosecution without affecting the charge.

For all these reasons we are of the opinion that the answers to the two questions reserved for our consideration are in the affirmative.

Questions answered in the affirmative.